

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

WILLIAM KEITH WININGEAR, et al,

Plaintiffs,

v.

Civil Action No. 2:12cv560

CITY OF NORFOLK, VIRGINIA,

Defendant.

**PLAINTIFFS' MOTION FOR CONDITIONAL COLLECTIVE ACTION
CERTIFICATION PURSUANT TO 29 U.S.C. §216(b) and MOTION FOR
CLASS CERTIFICATION PURSUANT TO FED. R. CIV. P. 23**

The Plaintiffs, William Keith Winingear, et al., by counsel, move for conditional certification of their Fair Labor Standards Act ("FLSA") claims under 29 U.S.C. §216(b), asserted at Count I of their Complaint, and for class certification under claims arising from Va. Code §9.1-700, et seq., asserted at Count II of their Complaint, and request the following specific relief:

1. That this action be certified conditionally as a collective action under the FLSA, 29 U.S.C. §216(b) as to Count I for all FLSA non-exempt and/or hourly law enforcement officers employed by the City of Norfolk between October 10, 2009 and the present date who were improperly denied overtime pay under the FLSA to which they were entitled.

2. That the Notice attached to Plaintiffs' Memorandum in Support of Motion for Conditional Collective Action Certification Pursuant to 29 U.S.C. §216(b) and Plaintiffs' Motion for Class Certification pursuant to Fed. R. Civ. P. 23 (the "Memorandum") as Exhibit 6 be issued to all Norfolk law enforcement officers who were non-exempt under the FLSA and/or paid by the hour and performed any work for the City between October 10, 2009 and the present date.

Further, Plaintiffs request that said officers be fully identified to Plaintiffs' counsel, to include all available contact information, within 14 days of the date of this Order.

3. That a class be certified pursuant to Fed. R. Civ. P. 23 of:

All City of Norfolk law enforcement officers who performed any work for the City between October 10, 2009, and the present date, who were non-exempt under the FLSA and/or paid by the hour and who were improperly denied overtime compensation under Va. Code §9.1-700, et seq.

4. That the class claims for the Fed. R. Civ. P. 23 class certified in the immediate preceding sub-paragraph shall include those claims asserted under Count II of Plaintiffs' Complaint, originally filed on behalf of Plaintiffs and all officers similarly situated, and which arise under Va. Code §9.1-700, et seq.

5. That the law firms of Patten, Wornom, Hatten & Diamonstein, L.C. and Richard J. Serpe, P.C., and individual counsel James H. Shoemaker, Jr., Richard J. Serpe, Cindra P. Dowd, Jason E. Messersmith and Patricia A. Melochick be appointed as class counsel for any class or collective action certified herein.

The Memorandum submitted herewith is offered in support of and to supplement this Motion and is incorporated herein by this reference.

WHEREFORE, the Plaintiffs, and all law enforcement officers similarly situated, respectfully request that the relief requested in this Motion be granted.

Respectfully submitted,

WILLIAM KEITH WININGEAR, et al

By: /s/ James H. Shoemaker, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October, 2013, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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